



In the Matter of:

**ROBERTO VAZQUEZ,**

**ARB CASE NO. 01-062**

**COMPLAINANT,**

**ALJ CASE NO.2000-STA-27**

**v.**

**DATE: August 31, 2001**

**AUTO TRUCK TRANSPORT,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>**

**Appearance:**

*For the Respondent:*

F. Larkin Fore, Esq., *Fore, Miller & Schwartz, Louisville, Kentucky*

**FINAL DECISION AND ORDER**

Roberto Vazquez filed a complaint in June 1999, under the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. §31105 (West 1997), and the implementing regulations at 29 C.F.R. Part 1978 (2000) alleging that his employer, Auto Truck Transport, violated the STAA's employee protection provisions when it discharged him from his employment as a truck driver. The Occupational Safety and Health Administration (OSHA) investigated Vazquez's complaint and found it to be without merit. Vazquez objected to OSHA's findings, and the case was referred to a Department of Labor Administrative Law Judge (ALJ) early in 2000.

On June 14, 2001, the ALJ issued a Recommended Order of Dismissal (R. O. D.) based upon Vazquez's failure to prosecute his claim. The ALJ found that Vazquez's failure to respond

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<sup>1/</sup> This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,979 (1996).

to the ALJ's May 10, 2001 Order to Show Cause<sup>2/</sup> was only the most recent of Vazquez's "several failures to comply with the orders of this Court." The ALJ further stated:

In addition, Mr. Vazquez has requested numerous continuances of the hearing, originally set for June 13, 2000, and has most recently requested that the hearing be continued until "at least" January or February of 2002. Further, he has burdened this Court and has delayed the processing of his claim through his repeated requests for information and services which are outside the realm of the Court's permissible function.

R. O. D. at 3-4. As provided in 29 C.F.R. §1978.109(a), the ALJ automatically forwarded the case to the Administrative Review Board for review and to issue a final order.

Upon receipt of the ALJ's R. O. D., the Board issued a Notice of Review and Briefing Schedule, reminding the parties that pursuant to 29 C.F.R. §1978.109(c)(2), the parties were permitted to file briefs in support of or in opposition to the ALJ's R. O. D. within thirty days of the date upon which the ALJ issued it. Auto Truck Transport filed a brief arguing that the ALJ had been "more than generous" in allowing Vazquez time to pursue his claim and that the claim should be dismissed as provided in the R. O. D. Vazquez filed no brief with the Board and thus provided no basis for his opposition, if any, to the R. O. D.

Upon review of the record, we agree with Auto Truck Transport's conclusion that the ALJ was "more than generous" in allowing Vazquez to pursue his claim. The record fully supports the ALJ's thorough and well-reasoned order recommending that we dismiss Vazquez's claim. Accordingly, we adopt the attached ALJ's R.O.D. and Vazquez's claim is **DISMISSED**.

**SO ORDERED.**

**PAUL GREENBERG**  
Chair

**E. COOPER BROWN**  
Member

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<sup>2/</sup> The May 10, 2001 Order required Vazquez to show cause why his request for a hearing and for relief under the STAA should not be dismissed because he failed to respond to the ALJ's May 4, 2001 procedural order and failed to prosecute his case.